

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT

In re:

Charles J. Cerulo,  
Debtor.

Chapter 7  
Case No. 99-11707

Charles J. Cerulo, and  
John R. Canney, III, Esq., Trustee

Plaintiffs,

vs.

Adversary Proceeding  
# 00-01043

#341

Jennifer Cerulo,

Defendant.

Appearances:

John R. Canney, III, Esq.  
Rutland, Vermont  
Trustee/Plaintiff

Michael Kainen, Esq.  
White River Junction, Vermont  
Attorney for Spouse/Defendant

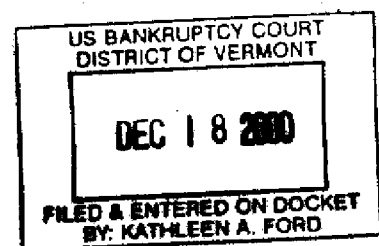
Debra Leahy, Esq.  
Bethel, Vermont  
Attorney for Debtor/Plaintiff

MEMORANDUM OF DECISION

The matter before the Court arises on cross-motions for summary judgment seeking a declaratory judgment as to the ownership of a certain inheritance of the debtor, and motions by the debtor's spouse for relief from stay and abstention so she can pursue this issue in state court, in the context of a pending divorce action.

JURISDICTION

This Court has jurisdiction over the adversary proceeding pursuant to 28 U.S.C. §§157 and 1334.



## BACKGROUND

The debtor filed a petition seeking relief under chapter 7 of Title 11 U.S.C. (the Bankruptcy Code) on December 27, 1999. On Schedule E, the debtor's spouse, Jennifer Cerulo, was listed as a creditor holding an unsecured priority claim for "spousal and child support." On April 20, 2000, Jennifer Cerulo filed an adversary proceeding objecting to the dischargeability of her debt [AP #00-1023]. On June 16, 2000, the debtor commenced this adversary proceeding against Jennifer Cerulo, by the filing of a *Complaint* seeking declaratory relief with respect to the debtor's interest in certain inheritance property [AP # 00-1043]. On September 18, 2000, the Defendant, Jennifer Cerulo, filed a *Motion for Relief from Stay* [case doc # 43] in the chapter 7 proceedings, and a *Combined Motion for Summary Judgment and Abstention* [AP doc # 15] herein. On October 5, 2000, the Trustee filed an objection to the relief stay motion [case doc # 48] and on October 10, 2000 the debtor filed his response to the lift stay request [case doc #50]. On October 16, 2000 an Order was entered permitting the Trustee to intervene in this adversary proceeding as a co-plaintiff to protect the interest of the estate in the inheritance [AP doc # 28]. On November 22, 2000 the Defendant filed her subsequent *Motion for Summary Judgment* [AP doc # 29] and on November 30, 2000, the Trustee likewise filed a *Motion for Summary Judgment*. [AP doc #31] While the parties disagree upon the applicable law, the underlying facts are undisputed.

The debtor is the defendant in a pre-petition action for divorce filed by his spouse, Jennifer Cerulo, in Windham County Family Court [civ doc # 294-7-99 Wrdrn]. There are marital assets in the bankruptcy estate, allegedly including the debtor's interest in a post-petition inheritance that vested within six months of filing for relief under chapter 7, and certain pre-petition marital debts, which the defendant contends are the sole obligation of the debtor. Upon the filing of the bankruptcy case, the divorce proceedings were stayed.

A hearing was held on December 5, 2000 to consider the summary judgment motions, lift stay motion and motion for abstention. Counsel for the debtor, counsel for the debtor's spouse, and the Trustee appeared at the hearing. The Court entered its decision on the record. This Memorandum of Decision is entered for the purpose of documenting the Court's ruling because the procedural and jurisdictional posture of these various motions is rather complicated and encompass both the main case and adversary proceeding.<sup>1</sup>

## FINDINGS OF FACT AND CONCLUSION OF LAW

After due consideration of the arguments submitted by counsel and all matters filed of record herein, the Court finds that:

1. This Court and the state court have concurrent jurisdiction over the question of distribution of the inheritance. See In re Wilson, 85 B.R. 722 (Bankr. E.D.Pa. 1988);

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<sup>1</sup> Documents are identified by "AP doc #\_\_\_\_" when they are filed in the adversary proceeding and as "case doc #\_\_\_\_" when filed in the chapter 7 case. Separate orders will be entered in the chapter 7 case and adversary proceeding to implement this decision.


2. The question of whether the inheritance is property of the bankruptcy estate, however, is a question solely of bankruptcy law and should be decided by this Court. See In re Meacham, 217 B.R. 877 (Bankr. D.Colo. 1998).
3. The inheritance in question is property of the debtor's estate under 11 U.S.C. section 541(a) and therefore is within the sole control of the Chapter 7 Trustee until further order either of this Court.
4. In the interest of justice and to promote judicial economy, the state court is the best forum for determining the debtor's spouse's ownership interest, if any, in the inheritance since this is a question of state law, and is relevant to the divorce proceeding already underway there. See In re Wilson, 85 B.R. 722 (Bankr. E.D.Penn. 1988); see also In re Polliard, 152 B.R. 51, 55-56 (Bankr. W.D.Penn. 1993).
5. The stay should be lifted, for cause, so that the debtor's spouse can proceed with the conclusion of the divorce and obtain an Order in that proceeding fixing the amount and nature of any debt or obligation owed by the debtor to the spouse; and the Trustee should participate therein on behalf of the debtor's bankruptcy estate to the extent necessary to obtain the information needed in order to properly administer the debtor's estate.

IT IS THEREFORE ORDERED THAT:

- I. The Trustee's motion for summary judgment [AP doc # 31] is granted to the extent he seeks a determination that the inheritance is indeed property of the debtor's bankruptcy estate; and the defendant's related motion for summary judgment [AP doc # 29] is denied.
- II. The debtor's spouse's motion for relief from stay [case doc # 43] is granted to allow the defendant to proceed with the divorce action but specifically remains in place to prohibit collection of any debts from the debtor other than those collections permitted by 11 U.S.C. section 362(b); and the defendant shall be entitled to payment from the estate to the extent allowed by the Bankruptcy Code and pursued through a timely proof of claim and proceedings thereunder.
- III. The defendant's motion for abstention and summary judgment [AP doc # 15] is otherwise denied without prejudice as moot.
- IV. The adversary proceeding [#00-1043] shall be closed after the expiration of the appeal period as to the Orders entered implementing this decision and the Trustee shall administer, liquidate and distribute the inheritance and any other assets of this debtor's bankruptcy estate as soon as practicable, in the context of the chapter 7 case, after a determination by the Windham County Family Court as to the spouse's ownership interest, if any, in the inheritance.

SO ORDERED.

December 18, 2000  
Rutland, Vermont

  
\_\_\_\_\_  
Hon. Colleen A. Brown  
United States Bankruptcy Judge

Notice sent to:

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**TRACOR**11400 Commerce Park Drive  
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# CERTIFICATE OF SERVICE

District/off: 0210-1  
Case: 00-01043User: kaf  
Form ID: #04Page 1 of 1  
Total Served: 4

Date Rcvd: Dec 18, 2000

The following entities were served by first class mail on Dec 20, 2000.  
aty-pla +Debra L. Leahy, Mascoma Bank Bldg. 2nd Floor, Main Street, PO Box 73, Bethel , VT 05032-0073  
aty-def +Michael R. Kainen, PO Box 919, White River Jct , VT 05001-0919  
cr U.S. Trustee, 74 Chapel St #200, Albany, NY 12207

The following entities were served by electronic transmission on Dec 18, 2000 and receipt of the transmission was confirmed on:  
ip +Fax: 802-773-3399 Dec 18 2000 21:03:39 John R. Canney, PO Box 6626, Rutland , VT 05702-6626  
TOTAL: 1

\*\*\*\*\* BYPASSED RECIPIENTS \*\*\*\*\*

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.  
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

Date: Dec 20, 2000

Signature:

